

Expedited Bill No. 34-09
Concerning: Forest Conservation –
Enforcement
Revised: 3-11-10 Draft No. 3
Introduced: October 6, 2009
Enacted: March 16, 2010
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the Planning Board

AN EXPEDITED ACT to:

- (1) amend the forest conservation law to modify the number of required inspections and the notification period for inspections;
- (2) specify the penalty procedures for violations of the forest conservation law;
- (3) modify the hearing procedures for violations of the forest conservation law; and
- (4) generally amend the forest conservation law.

By amending

Montgomery County Code

Chapter 22A, Forest Conservation

Sections 22A-15 through 22A-17 and 22A-19 through 22A-21

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 22A-15 through 22A-17 and 22A-19 through 22A-21 are**
 2 **amended as follows:**

3 **22A-15. Inspections and notification.**

4 (a) *Permission to gain access.* [Authorized representatives of]
 5 Representatives authorized by the Planning [Department] Director may
 6 enter properties subject to this Chapter for the purpose of inspection,
 7 review, and enforcement.

8 (b) *Plan to be on site; field markings.* A copy of the approved forest
 9 conservation plan must be available on the site for inspection by
 10 [authorized] representatives authorized by the Planning Director. Field
 11 markings must exist on site before and during installation of all
 12 protective devices, construction, or other land disturbing activities.

13 (c) *Required inspections.*

14 (1) The Planning Department [should] must conduct [at least 3] 6
 15 field inspections of a [tract subject to an approved forest
 16 conservation plan. The inspections should take place as follows:]
 17 site as specified in this subsection.

18 [(1) The first inspection should take place before any land disturbing
 19 activities (including clearing, grading, or stripping) occurs on the
 20 tract to determine if protective measures have been properly
 21 installed and conservation areas clearly marked;

22 (2) The second inspection should take place following completion of
 23 all land disturbing activities and afforestation or reforestation to
 24 determine the level of compliance with the forest conservation
 25 plan; and

26 (3) The third inspection should take place at the end of the
 27 maintenance agreement 2-year time period.]

(2) The Planning Director must [[conduct field inspection of a]] inspect each site that is subject to an approved forest conservation plan [[as follows]]:

(A) after the limits of disturbance have been staked and flagged, but before any clearing or grading begins;

(B) after necessary stress reduction measures have been completed and the protection measures have been installed, but before any clearing or grading begins;

(C) after all construction activities are completed, to determine the level of compliance with the forest conservation plan;

(D) before any required reforestation and afforestation planting is started;

(E) after required reforestation and afforestation have been completed, to verify the planting is acceptable and begin the maintenance and management period; and

(F) at the end of the maintenance and management period, to determine the level of compliance with the planting plan and, if appropriate, authorize release of financial security.

(d) *Other inspections.* The Planning [Department] Director may [conduct other] authorize additional inspections or meetings as necessary to administer this Chapter[, including an inspection to confirm a forest stand delineation], including an inspection to confirm a natural resource inventory and forest stand delineation.

(e) *[Required notifications] Scheduling requirements for forest conservation and tree save plan inspections.* A person must request an inspection by the Planning Director at least 7 days before the required date of the inspection under subsection (c).

[(1) At least 2 working days before starting any land disturbing activities associated with the forest conservation plan, a person must notify the Planning Department. The Planning Department must coordinate its inspections, and any pre-construction conferences, with the Department of Permitting Services to avoid inconsistent directives in the field relating to the forest conservation plan and sediment control activities.

(2) At least 2 working days before completion of afforestation and reforestation plantings, a person must notify the Planning Department so that the Department may schedule the second inspection specified under paragraph (c)(2) of this Section.]

(f) Coordination. The Planning Department must coordinate its inspections, and any pre-construction conferences, with the Department of Permitting Services to avoid inconsistent activities relating to the forest conservation plan and sediment control reviews.

22A-16. Penalties and other remedies.

(a) *Class A violation.* [Violation] Any violation of this Chapter or any regulations adopted under it is a Class A civil [[or criminal]] violation. [Notwithstanding Section 1-19, the] The maximum civil fine is \$1,000. Each day a violation continues [is] may be treated as a separate violation under this Chapter.

(b) *Enforcement authority.* The [[Maryland-National Capital Park and]] Planning [[Commission]] Board has primary enforcement authority under this Chapter. Administrative enforcement actions [are to] may be initiated by the Planning Director [in accordance with] under this Article.

(c) *Civil ~~[[and criminal]]~~ actions.* The ~~[[Commission]]~~ Board may bring any civil ~~[[or criminal]]~~ action authorized by law that the County may bring under Sections 1-18, 1-19, and 1-20 to enforce this Chapter or any regulation adopted under it. The ~~[[Commission]]~~ Board may also bring a civil action to enforce a forest conservation plan and any associated agreements, easements, and restrictions, or to enforce an administrative order. These remedies are in addition to any remedy that the ~~[[Commission]]~~ Board or County may initiate under state or County law to enforce the terms of a regulatory approval which incorporates a forest conservation plan.

[(1) Notice of Violation.

(A) The Planning Director may issue a notice of violation to a person believed to be in violation of this Chapter. The Planning Director must retain a copy of the notice of violation.

(B) A notice of violation issued under this Article must be served on the alleged violator personally, on the violator's agent at the activity site, or by certified mail to the violator's last known address.

(C) The notice of violation must contain at least the following information:

- (i) the name and address of the person charged;
- (ii) the nature of the violation;
- (iii) the place where and the approximate date when the violation occurred;
- (iv) a statement advising the recipient of the corrective or remedial action to be taken, which may include

a meeting with Commission staff to develop a compliance plan, and the date by which the corrective or remedial action must be completed; and

(v) a statement advising the recipient of the right to a hearing before the Planning Board or the Board's designee.

(2) Citation.

(A) The Planning Director may issue a citation to a person believed to be in violation of this Chapter. The Planning Director may use any citation consistent with this Section, including the State of Maryland Uniform Civil Citation form. The Planning Director must certify the truth of the allegations in the citation. The Planning Director must retain a copy of the citation.

(B) A citation issued under this Article must be served on the alleged violator personally, on the violator's agent at the activity site, or by certified mail to the violator's last known address.

(C) The citation must contain at least the following information:

(i) the name and address of the person charged;

(ii) the nature of the violation;

(iii) the place where and the approximate date when the violation occurred;

(iv) the amount of the fine assessed;

(v) the manner, location, and time in which the fine may be paid, and the party to whom the fine must be paid;

(vi) the date by which the fine must be paid; and

(vii) a statement advising the recipient of the right to a hearing before the Planning Board or the Board's designee.

(3) Notice of Hearing.

(A) The Planning Director may issue an administrative notice that notifies an alleged violator of an enforcement hearing to be held by the Planning Board or the Board's designee to address the alleged violation.

(B) A notice of hearing issued under this Article must be served on the alleged violator personally, on the violator's agent at the activity site, or by certified mail to the violator's last known address.

(C) The notice of hearing must contain at least the following information:

(i) the name and address of the person charged;

(ii) the nature of the violation;

(iii) the place where and the approximate date when the violation occurred; and

(iv) a statement advising the recipient of the date, time, and location of the hearing.]]

(d) *Administrative civil penalty.*

(1) In addition to any other [remedies provided] remedy under this Article, a person who violates this Chapter, any [[regulations]]

regulation adopted under it, a forest conservation plan, or any associated [[agreements or restrictions]] agreement or restriction, is liable for an administrative civil penalty imposed by the Planning Board. This administrative civil penalty must not exceed the rate set by the County Council by law or resolution, except as provided in paragraph (3), but must not be less than the amount specified in Section 5-1608(c) of the Natural Resources Article of the Maryland Code. Each day a violation is not corrected is a separate violation.

- (2) In determining the amount of the administrative civil penalty, or the extent of an administrative order issued by the Planning Director under Section 22A-17, the Planning Board or Planning Director must consider:

* * *

- (4) [The reasons for imposing a civil penalty must be provided in a written opinion of the Planning Board and included in its administrative order.] The Planning Board must include the reasons for imposing an administrative civil penalty in its resolution adopting the administrative order.

[[* * *]]

- (e) *Enforcement Notices.* The Planning Director may issue one or more of the following notices to enforce any provision of this Chapter. The issuance of a notice under this subsection does not require the previous issuance of any other notice.

- (1) *Notice of Violation.*

(A) The Director may issue a notice of violation to a person who the Director believes has violated or is violating this Chapter. The Director must retain a copy of each notice.

(B) A notice of violation issued under this Article must be served on the alleged violator personally, on the alleged violator's agent at the activity site, or by certified mail to the alleged violator's last known address.

(C) The notice of violation must contain at least the following information:

(i) the name and address of the person charged with a violation;

(ii) the nature of the violation;

(iii) the place where and the approximate date when the violation occurred;

(iv) a statement advising the recipient of the corrective or remedial action to be taken, which may include a meeting with Planning staff to develop a compliance plan, and the date by which any corrective or remedial action must be completed; and

(v) a statement advising the recipient of the right to a hearing before the Planning Board or the Board's designee.

(2) Administrative Citation.

(A) The Director may issue an administrative citation to a person who the Director believes has violated or is violating this Chapter. The Director may use any citation consistent with this Section, including the State of

Maryland Uniform Civil Citation form. The Director must certify the truth of the allegations in the citation. The Director must retain a copy of each citation.

(B) An administrative citation issued under this Article must be served on the alleged violator personally, on the alleged violator's agent at the activity site, or by certified mail to the alleged violator's last known address.

(C) The administrative citation must contain at least the following information:

(i) the name and address of the person charged with a violation;

(ii) the nature of the violation;

(iii) the place where and the approximate date when the violation occurred;

(iv) the amount of the fine assessed;

(v) how, when, where, and to whom the fine may be paid; and

(vi) a statement advising the recipient of the right to a hearing before the Planning Board or the Board's designee.

(3) *Notice of Hearing.*

(A) The Director may issue an administrative notice which informs an alleged violator of an enforcement hearing to be held by the Planning Board or the Board's designee to address an alleged violation.

(B) A notice of hearing issued under this Article must be served on the alleged violator personally, on the alleged

241 violator's agent at the activity site, or by certified mail to
 242 the alleged violator's last known address.

243 (C) The notice of hearing must contain at least the following
 244 information:

245 (i) the name and address of the person charged with a
 246 violation;

247 (ii) the nature of the violation;

248 (iii) the place where and the approximate date when the
 249 violation occurred; and

250 (iv) a statement advising the recipient of the date, time,
 251 and location of the hearing.

252 ~~[(e)]~~ (f) *Fund.* Money collected under this Section must be deposited into the
 253 forest conservation fund.

254 **22A-17. Corrective actions.**

255 (a) *Administrative order.* At any time, including during an enforcement
 256 action, the Planning Director may issue an administrative order
 257 requiring the violator to take one or more of the following actions
 258 within a certain time period specified by the Planning Director:

259 (1) stop the violation;

260 (2) stabilize the site to comply with a reforestation plan;

261 (3) stop all work at the site;

262 (4) restore or reforest unlawfully cleared areas;

263 (5) submit a forest conservation plan for the property;

264 (6) place forested or reforested land under long-term protection by a
 265 conservation easement, deed restriction, covenant, or other
 266 appropriate legal instrument; or

267 (7) submit a written report or plan concerning the violation.

- (b) *Effectiveness of order.* An order issued under this Section is effective, according to its terms, when it is served.

22A-19. Noncompliance with conditions of exemption [[conditions]].

* * *

- (b) *Penalties for noncompliance.* In addition to any other [remedies] remedy under this Chapter, the Planning Board may require a person in noncompliance to:

- (1) [meet the forest conservation threshold as would have been required] prepare, submit, and implement a forest conservation plan;
- (2) pay an administrative civil penalty under Section 22A-16(d) for the area of forest cut or cleared under the exemption; or
- (3) both.

22A-20. [Notice, hearings,] Hearings and appeals.

* * *

- (b) *Forest conservation plans and variances approved by the Planning Board [or District Council].*

[(1)] A person aggrieved by the decision of the Planning Board on the approval, denial, or modification of a forest conservation plan (including a request for a variance) may [file a judicial] appeal [of] the final administrative action on the development approval [in accordance with Subtitle B of] under the Maryland Rules of Procedure and any other law applicable to the proceeding.

[(2)] A person aggrieved by the decision of the District Council on the approval, denial, or modification of a forest conservation plan (including a request for a variance) proposed in conjunction with

a development plan may file a judicial appeal of the action on the development plan in accordance with Division 59-H-8.]

(c) *Forest stand delineations and forest conservation plans approved by the Planning Director.*

(1) *Appeal to Planning Board.* [Upon receipt of] After the Planning [Director's] Director issues a written decision on a natural resource inventory/forest stand delineation or forest conservation plan, an applicant [has 30 days in which to] may appeal the decision to the Planning Board within 30 days.

(2) *Hearing; decision.* The Planning Board must hold a de novo hearing on the appeal [and inform the applicant in writing of its decision. The Board must consider the appeal de novo]. The Board must adopt a written resolution explaining its decision. For purposes of judicial review, the decision of the Planning Board [constitutes] is the final agency action.

(3) *Appeal.* [Upon receipt of] After receiving the Planning Board's decision, an applicant [has 30 days in which to] may appeal the decision within 30 days under [in accordance with Subtitle B of] the Maryland Rules of Procedure.

(d) *Administrative enforcement [[actions]] process.*

(1) *Notice.* A [[complaint, order,]] citation, notice of violation, or other administrative notice issued by the Planning Director under [[this Article must be served on the alleged violator personally, on the violator's agent at the activity site, or by certified mail to the violator's last known address. The notice must identify the alleged violator, the location of the violation, and the specific facts of the violation, and]] Section 22A-16(e) or an order issued

under Section 22A-17 must give the [[alleged violator]] recipient the [[opportunity]] right [for] to request, within 15 days after receiving the notice, a hearing before the Planning Board or the Board's designee [within 10 working days of receipt of the notice. If an administrative action under this Article can only be taken by the Board, the notice must state the date on which the action is scheduled to be considered by the Board].

(2) *Hearing.*

(A) If [[an alleged violator]] the recipient of a notice or order requests an opportunity for a hearing [is requested], the [[matter]] Board or its designee must [[be expeditiously scheduled on a Planning Board agenda]] promptly schedule a hearing unless the [[alleged violator]] recipient consents to a delay. The filing of a request for a hearing does not stay an administrative order to stop work, stabilized a site, or stop a violation.

(B) If the Planning Board or the Board's designee [[elects to hold]] holds a hearing [[on an action]] under this Article, the Board or its designee must issue a notice of the hearing date.

(C) The Planning Board may designate a hearing officer, including a Hearing Examiner from the Office of Zoning and Administrative Hearings, to conduct a hearing and submit a report and recommendation on any alleged violation of this Chapter. The hearing officer must submit the required report and recommendation to the Board not later than 60 days after the hearing record closes. The

hearing officer may extend the time to file the report by
 [[providing notice of the delay to]] notifying all parties.

(3) *Decision.* The Planning Board must inform the [[alleged violator]] recipient in writing of its decision on an administrative enforcement action. The Board's decision [constitutes] is the final agency action for all purposes [of judicial review].

(4) *Appeal.* [Upon receipt of] After receiving the Planning Board's decision, an aggrieved person [has 30 days in which to] may appeal the Board's action [in accordance with Subtitle B of] within 30 days under the Maryland Rules of Procedure.

22A-21. Variance [[provisions]].

(a) *Written request.* [A person] An applicant may request in writing a variance from this Chapter or any regulation adopted under it if the [person demonstrates] applicant shows that enforcement would result in unwarranted hardship [to the person]. A request for a variance [waives] suspends the time requirements in Section 22A-11 until the Planning Board acts on the request.

(b) *Application requirements.* An applicant for a variance must:

- (1) describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- (2) describe how enforcement of [these rules] this Chapter will deprive the landowner of rights commonly enjoyed by others in similar areas;
- (3) verify that State water quality standards will not be violated [or] and that a measurable degradation in water quality will not occur as a result of [the] granting [of] the variance; and
- (4) provide any other information appropriate to support the request.

- 375 (c) *Referral to other agencies.* Before considering a variance, the Planning
 376 Board must [refer] send a copy of each request to the County Arborist,
 377 Planning [Department] Director, and any other appropriate [officials or
 378 agencies] agency for a written recommendation before acting on the
 379 request. [Recommendations must be] If a recommendation on the
 380 variance is not submitted to the Planning Board within 30 days [from
 381 the receipt by the official or agency of the request or] after the referral,
 382 the recommendation [should] must be presumed to be favorable.
- 383 (d) *Minimum criteria.* A variance [must not] may only be granted if it meets
 384 the criteria in subsection (a). However, a variance must not be granted
 385 if granting the request:
- 386 (1) will confer on the applicant a special privilege that would be
 387 denied to other applicants;
 - 388 (2) is based on conditions or circumstances which [are the] result [of
 389 the] from actions by the applicant;
 - 390 (3) [arises from] is based on a condition relating to land or building
 391 use, either permitted or nonconforming, on a neighboring
 392 property; or
 - 393 (4) will violate State water quality standards or cause measurable
 394 degradation in water quality.
- 395 (e) *Approval procedures; Conditions.* The Planning Board[, or the District
 396 Council on a development plan,] must [make findings] find that the
 397 applicant has met all requirements of this Section before granting a
 398 variance. [Appropriate] The Board may impose appropriate conditions
 399 [may be imposed] to promote the objectives of this Chapter and protect
 400 the public interest.

401 * * *

Sec. 2. Expedited effective date; applicability.

- (a) The Council declares that this Act is necessary for the immediate protection of the public interest. This Act takes effect on the date when it becomes law.
- (b) Any amendment to County Code Chapter 22A made by Section 1 of this Act applies to any enforcement action that begins after this Act takes effect even if the alleged violation on which the enforcement action is based was committed before this Act took effect.

Approved:

Nancy Floreen, President, County Council Date

Approved:

Isiah Leggett, County Executive Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council Date